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WAR FOOD ADMINISTRATION
Office of Marketing Services
Washington, D. C.

To: Chas. P. Bowling, Chief, Transportation Rates & Services
Division

From: G. P. Shuler, Jr., and H. D. Bergen, Transportation Rates &
Services Division

Subject: Freight Tariff Publications of Rail Carriers.

Your attention is respectfully directed to what is believed to be the unlawful condition of many freight rate tariffs of rail carriers generally, and the resultant nation-wide confusion and uncertainty as to legally applicable freight rates on carload traffic, more particularly.

SECTION 6(1) REQUIRES "PLAIN" TARIFFS

Section 6 of the Act requires that the Carriers' schedules

"shall plainly state*****any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such*****rates, fares, and charges, or the value of the service rendered*****"

Both the Commission and Courts have long recognized the responsibility of the shipper to determine and pay the legally applicable rate on his shipments. The shipper has been and is charged with knowledge of the tariff. A published tariff is held to have the force and effect of a statute and is binding alike on carrier and shipper. (See page 25, Exhibit "A" attached.)

Long ago the Commission said that a classification sheet

"is supposed to be expressed in plain terms, so that the ordinary business man can understand it and, in connection with the rate sheets, can determine for himself what he can be lawfully charged for transportation."

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Also, that failure to observe the statutory requirements that schedules shall be "plainly stated" and "plainly printed", is a sufficient ground for permanent suspension. And further, that tariffs should be so framed as to admit of no uncertainty, condition, or discrimination in their application. Rates should be definitely stated, without burdening and confusing the public with the need of making involved calculations.

Therefore, it is extremely important and essential that both carriers and shippers be in position to readily and accurately determine what is the legal rate in any particular instance. Yet because of the chaotic condition of many tariffs and the multiplicity of publications, it is virtually impossible for a shipper to meet this obligation. Since the Commission has placed this responsibility in respect to tariffs upon the shipper, it follows that he may properly look to the Commission for relief from the present situation.

THE PRESENT TARIFF SITUATION

The existing tariff situation, comprised as it is, of complication, intricacy, and ambiguity, invites, if it does not intend, the very injustices, inequalities, misunderstandings, and discriminations which are forbidden by law. It also places an enormous burden of extra expense upon the shippers of the nation, arising from inexcusable waste of manpower hours, grave delay in obtaining information necessary to conclude commercial transactions, expensive filing and handling of claims for recovery of overcharges, necessity of defending suits by carriers to collect disputed undercharges, etc.

1. The first part of the document is a letter from the President of the United States to the Congress.

2. The second part is a report on the state of the Union, prepared by the President.

3. The third part is a report on the state of the Union, prepared by the President.

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This result has come about in large degree by reason of the deplorable condition of thousands of freight tariffs throughout the country; the cumulative effect of 25 or 30 years of progressive deterioration and, in our opinion, proceeding mostly from the Commission's issuance of thousands of "special permissions" authorizing carriers to depart from the requirements of the Commission's Tariff Circular and also its failure to reject tariff publications which do not meet those requirements. Many of the "permissions" have been outstanding for 10 years or more, with almost no effort displayed on the part of the carriers to bring their tariff publications in line with the Commission's rules.

The Commission's Tariff Circular, of course, is designed to bring about the clear and definite publication of rates required by Section 6 of the Interstate Commerce Act, but the rules of the Tariff Circular are more honored in the breach than in the performance.

The Commission's Annual Report for 1944 shows that during the year, 4,956 "special permissions" were granted for short-notice publication and for waiver of tariff publication rules. It is estimated that rule waivers do not exceed 12 percent of the total. The comments herein relate only to waiver of rules. While these are a small percent of the total "special permissions" granted annually, yet they represent a considerable accumulation over a long period of years.

It seems to us that it is extremely doubtful whether the Commission is clothed with power to permit the carriers to depart from the duty,

directly imposed on them by statute, to plainly state their "rates, fares, and charges" (Section 6, paragraph 1). Nevertheless, the direct result of all the departures from the Tariff Circular requirements, which the Commission has granted and continues to grant, is to complicate and confuse the rate tariffs, or to state it otherwise, additional complication and confusion is piled upon a tariff situation already saturated with complication and confusion. The condition will not improve in the least, unless the Commission takes some action to force the carriers to get their tariffs out from under the "special permissions" and into compliance with the Tariff Circular.

WAR FOOD ADMINISTRATION IS A LARGE SHIPPER

You, of course, are aware of the fact that the War Food Administration, including the Commodity Credit Corporation, is the largest shipper of agricultural products (food and fibre) in the United States, and consequently causes huge sums of tax money to be paid in settlement of railroad freight bills. To determine the amount of these charges, requires constant use of the numerous and complicated rail tariffs with uncertain results, largely because determination with finality is impossible in thousands of instances.

The attached Exhibit, which we have prepared for your information, is an analysis of representative freight tariffs, showing violations of the Commission's Tariff Circular rules authorized by "special permission" of the Commission.

EXHIBIT A CONTAINS SUPPORTING DATA

The Exhibit shows what these violations of the tariff rules mean when reflected in the tariffs, and indicates in a general way the manifold operations and the multiplicity of auxilliary tariff publications involved in ascertaining a single freight rate, which even after an attempted determination is made, will often remain in the doubtful class.

ANALYSIS OF MONTANA TARIFF

Attention is especially directed to the analysis of W.T.L. Freight Tariff No. 14-H, (Agent Kipp's ICC No. 1488), at page 19 of Exhibit "A" attached, in which we point out in detail most (but not all) of the actual operations required of a shipper to obtain one rate from that particular tariff.

CONCLUSIONS AND RECOMMENDATIONS

We suggest that this is a field of operation, long neglected, which needs to be gone into by the Commission and earnest efforts made by it to bring about, in behalf of the shipping public, a semblance of legality (see paragraph (a) below), into the class of carrier tariff publications dealt with herein.

We recommend that steps be taken by the Commission to:

- (a) Provide the shipping public with the clear and definite statement of rates contemplated by Section 6(1) of the Act, as interpreted in decisions of the Commission and the Courts.

- (b) Establish a definite and progressive program to bring carriers' tariffs in line with the requirements of the Tariff Circular, especially those containing provisions in violation of the Tariff Circular, protected by "special permissions" of 20 to 25 years standing.
- (c) Limit issuance of new "special permissions" to instances where actual bona fide necessity is proven by the carriers, with due consideration given to the effect upon the shipping public.
- (d) Bring about a closer scrutiny or examination of new tariffs tendered for filing and reject those which do not meet the requirements of the Tariff Circular.
- (e) Give consideration to the cancellation of all rules authorizing use of "Aggregate of Intermediate Rates" and in lieu thereof, the establishment of revised Rule 56, which will provide in substance that a shipper may substitute for a through rate a lower aggregate of rates, provided, as a condition precedent thereto, the shipper immediately gives notice in writing to the agent of the initial line at point of origin; to the party publishing the through rate and to the Interstate Commerce Commission, of the lower aggregate rate factors which are to be substituted for the through rates. The tariff issuing agent should promptly publish reduced through rate not exceeding the lawful aggregate contained in the notice.

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The substituted aggregate rate will apply over the routes governing the application of the through rate for which the aggregate is being substituted.

- (f) Institute such other and further action as may to the Commission appear desirable in furtherance of the ends sought.

If you agree with our conclusions as to the importance of this matter from the shipper's standpoint, we suggest it would be well to bring the subject to the attention of the Commission.

Attachment

